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TARGET CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LETICIA MAGLAYA,

Plaintiff,

vs.

TARGET CORPORATION, and DOES
ONE through ONE HUNDRED,

Defendants.

) Case No. 4:18-cv-02606-YGR

) **STIPULATED PROTECTIVE ORDER**

) Complaint Filed: 08/22/17

) Trial Date: None

) [Alameda Superior Court Case No.
RG17872463]

) ***As Modified by the Court***

I. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to

1 file material under seal.

2 **II. DEFINITIONS**

3 2.1 Challenging Party: A Party or Non-Party that challenges the designation of information
4 or items under this Order.

5 2.2 “CONFIDENTIAL” Information or Items: Information (regardless of how it is
6 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
7 of Civil Procedure 26(c).

8 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
9 their support staff).

10 2.4 Designating Party: A Party or Non-Party that designates information or items that it
11 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

12 2.5 Disclosure or Discovery Material: All items or information, regardless of the medium or
13 manner in which it is generated, stored, or maintained (including, among other things, testimony,
14 transcripts, and tangible things), that are produced or generated in disclosures or responses to
15 discovery in this matter.

16 2.6 Expert: A person with specialized knowledge or experience in a matter pertinent to the
17 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
18 consultant in this action.

19 2.7 House Counsel: Attorneys who are employees of a party to this action. House Counsel
20 does not include Outside Counsel of Record or any other outside counsel.

21 2.8 Non-Party: Any natural person, partnership, corporation, association, or other legal
22 entity not named as a Party to this action.

23 2.9 Outside Counsel of Record: Attorneys who are not employees of a party to this action
24 but are retained to represent or advise a party to this action and have appeared in this action on
25 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

26 2.10 Party: any party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and Outside Counsel of Record (and their support staffs).
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1 2.11 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material
2 in this action.

3 2.12 Professional Vendors: Persons or entities that provide litigation support services (e.g.,
4 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
5 storing, or retrieving data in any form or medium) and their employees and subcontractors.

6 2.13 Protected Material: Any Disclosure or Discovery Material that is designated as
7 “CONFIDENTIAL.”

8 2.14 Receiving Party: A Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 III. SCOPE

11 The protections conferred by this Stipulation and Order cover not only Protected Material
12 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
13 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
14 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
15 However, the protections conferred by this Stipulation and Order do not cover the following
16 information:

17 (a) any information that is in the public domain at the time of
18 disclosure to a Receiving Party or becomes part of the public
19 domain after its disclosure to a Receiving Party as a result of
publication not involving a violation of this Order, including
becoming part of the public record through trial or otherwise; and

20 (b) any information known to the Receiving Party prior to the
21 disclosure or obtained by the Receiving Party after the disclosure
22 from a source who obtained the information lawfully and under no
23 obligation of confidentiality to the Designating Party. Any use of
Protected Material at trial shall be governed by a separate agreement
or order.

24 IV. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
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1 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
2 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
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1 action, including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3 **V. DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
5 Non-Party that designates information or items for protection under this Order must take care to
6 limit any such designation to specific material that qualifies under the appropriate standards. The
7 Designating Party must designate for protection only those parts of material, documents, items,
8 or oral or written communications that qualify – so that other portions of the material,
9 documents, items, or communications for which protection is not warranted are not swept
10 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized designations are
11 prohibited. Designations that are shown to be clearly unjustified or that have been made for an
12 improper purpose (e.g., to unnecessarily encumber or retard the case development process or to
13 impose unnecessary expenses and burdens on other parties) expose the Designating Party to
14 sanctions. If it comes to a Designating Party's attention that information or items that it
15 designated for protection do not qualify for protection, that Designating Party must promptly
16 notify all other Parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
18 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
19 or Discovery Material that qualifies for protection under this Order must be clearly so designated
20 before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
23 documents, but excluding transcripts of depositions or other pretrial
24 or trial proceedings), that the Producing Party affix the legend
25 "CONFIDENTIAL" to each page that contains protected material. If
26 only a portion or portions of the material on a page qualifies for
27 protection, the Producing Party also must clearly identify the
28 protected portion(s) (e.g., by making appropriate markings in the
margins).

A Party or Non-Party that makes original documents or materials
available for inspection need not designate them for protection until
after the inspecting Party has indicated which material it would like
copied and produced. During the inspection and before the

1 designation, all of the material made available for inspection shall
2 be deemed "CONFIDENTIAL." After the inspecting Party has
3 identified the documents it wants copied and produced, the
4 Producing Party must determine which documents, or portions
5 thereof, qualify for protection under this Order. Then, before
6 producing the specified documents, the Producing Party must affix
7 the "CONFIDENTIAL" legend to each page that contains Protected
8 Material. If only a portion or portions of the material on a page
9 qualifies for protection, the Producing Party also must clearly
10 identify the protected portion(s) (e.g., by making appropriate
11 markings in the margins).

12 (b) for testimony given in deposition or in other pretrial or trial
13 proceedings, that the Designating Party identify on the record,
14 before the close of the deposition, hearing, or other proceeding, all
15 protected testimony.

16 (c) for information produced in some form other than documentary
17 and for any other tangible items, that the Producing Party affix in a
18 prominent place on the exterior of the container or containers in
19 which the information or item is stored the legend
20 "CONFIDENTIAL." If only a portion or portions of the information
21 or item warrant protection, the Producing Party, to the extent
22 practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
24 qualified information or items does not, standing alone, waive the Designating Party's right to
25 secure protection under this Order for such material. Upon timely correction of a designation, the
26 Receiving Party must make reasonable efforts to assure that the material is treated in accordance
27 with the provisions of this Order.

28 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
challenge a confidentiality designation by electing not to mount a challenge promptly after the
original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
providing written notice of each designation it is challenging and describing the basis for each

1 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
2 recite that the challenge to confidentiality is being made in accordance with this specific
3 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good
4 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms
5 of communication are not sufficient) within 14 days of the date of service of notice. In
6 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
7 designation was not proper and must give the Designating Party an opportunity to review the
8 designated material, to reconsider the circumstances, and, if no change in designation is offered,
9 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
10 stage of the challenge process only if it has engaged in this meet and confer process first or
11 establishes that the Designating Party is unwilling to participate in the meet and confer process in
12 a timely manner.

13 6.3 Judicial Intervention. **If the Parties cannot resolve a challenge without court**
14 **intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding**
15 **Discovery and Discovery Motions. The parties may file a joint letter brief regarding**
16 **retaining confidentiality within 21 days of the initial notice of challenge or within 14 days of**
17 **the parties agreeing that the meet and confer process will not resolve their dispute,**
18 **whichever is earlier. Failure by a Designating Party to file such discovery dispute letter**
19 **within the applicable 21 or 14 day period (set forth above) with the Court shall**
20 **automatically waive the confidentiality designation for each challenged designation. If,**
21 **after submitting a joint letter brief, the Court allows that a motion may be filed, any such**
22 **motion must be accompanied by a competent declaration affirming that the movant has**
23 **complied with the meet and confer requirements imposed in the preceding paragraph. The**
24 **Court, in its discretion, may elect to transfer the discovery matter to a Magistrate Judge.**

25 In addition, the parties may file a joint letter brief regarding a challenge to a
26 confidentiality designation at any time if there is good cause for doing so, including a
27 challenge to the designation of a deposition transcript or any portions thereof. If, after
28 submitting a joint letter brief, the Court allows that a motion may be filed, any motion

1 brought pursuant to this provision must be accompanied by a competent declaration
2 affirming that the movant has complied with the meet and confer requirements imposed by
3 the preceding paragraph. The Court, in its discretion, may elect to refer the discovery
4 matter to a Magistrate Judge.

5 The burden of persuasion in any such challenge proceeding shall be on the
6 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
7 harass or impose unnecessary expenses and burdens on other parties) may expose the
8 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality
9 designation by failing to file a letter brief to retain confidentiality as described above, all
10 parties shall continue to afford the material in question the level of protection to which it is
11 entitled under the Producing Party's designation until the court rules on the challenge.

12 ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
14 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
15 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
16 to the categories of persons and under the conditions described in this Order. When the litigation
17 has been terminated, a Receiving Party must comply with the provisions of section 13 below
(FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location and in a
19 secure manner that ensures that access is limited to the persons authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
21 court or permitted in writing by the Designating Party, a Receiving Party may disclose any
22 information or item designated "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action,
24 as well as employees of said Outside Counsel of Record to whom it
25 is reasonably necessary to disclose the information for this litigation
and who have signed the "Acknowledgment and Agreement to Be
Bound" that is attached hereto as Exhibit A;

26 (b) the officers, directors, and employees (including House
27 Counsel) of the Receiving Party to whom disclosure is reasonably
28 necessary for this litigation and who have signed the
"Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (c) Experts (as defined in this Order) of the Receiving Party to
2 whom disclosure is reasonably necessary for this litigation and who
3 have signed the "Acknowledgment and Agreement to Be Bound"
(Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial
6 consultants, mock jurors, and Professional Vendors to whom
7 disclosure is reasonably necessary for this litigation and who have
8 signed the "Acknowledgment and Agreement to Be Bound"
(Exhibit A);

9 (f) during their depositions, witnesses in the action to whom
10 disclosure is reasonably necessary and who have signed the
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
12 otherwise agreed by the Designating Party or ordered by the court.
13 Pages of transcribed deposition testimony or exhibits to depositions
14 that reveal Protected Material must be separately bound by the court
15 reporter and may not be disclosed to anyone except as permitted
16 under this Stipulated Protective Order.

17 (g) the author or recipient of a document containing the information
18 or a custodian or other person who otherwise possessed or knew the
19 information.

20 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED** 21 **IN OTHER LITIGATION**

22 If a Party is served with a subpoena or a court order issued in other litigation that compels
23 disclosure of any information or items designated in this action as "CONFIDENTIAL," that
24 Party must:

25 (a) promptly notify in writing the Designating Party. Such
26 notification shall include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or
28 order to issue in the other litigation that some or all of the material
covered by the subpoena or order is subject to this Protective Order.
Such notification shall include a copy of this Stipulated Protective
Order; and

(c) cooperate with respect to all reasonable procedures sought to be
pursued by the Designating Party whose Protected Material may be
affected.

If the Designating Party timely seeks a protective order, the Party served with the
subpoena or court order shall not produce any information designated in this action as
"CONFIDENTIAL" before a determination by the court from which the subpoena or order

1 issued, unless the Party has obtained the Designating Party's permission. The Designating Party
2 shall bear the burden and expense of seeking protection in that court of its confidential material –
3 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
4 Party in this action to disobey a lawful directive from another court.

1 **VIII. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced
4 by a Non-Party in this action and designated as
5 "CONFIDENTIAL." Such information produced by Non-Parties in
6 connection with this litigation is protected by the remedies and relief
7 provided by this Order. Nothing in these provisions should be
8 construed as prohibiting a Non-Party from seeking additional
9 protections.

10 (b) In the event that a Party is required, by a valid discovery
11 request, to produce a Non-Party's confidential information in its
12 possession, and the Party is subject to an agreement with the Non-
13 Party not to produce the Non-Party's confidential information, then
14 the Party shall:

15 (1) promptly notify in writing the Requesting Party and the
16 Non-Party that some or all of the information requested is subject to
17 a confidentiality agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the
19 Stipulated Protective Order in this litigation, the relevant discovery
20 request(s), and a reasonably specific description of the information
21 requested; and

22 (3) make the information requested available for inspection
23 by the Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order from
25 this court within 14 days of receiving the notice and accompanying
26 information, the Receiving Party may produce the Non-Party's
27 confidential information responsive to the discovery request. If the
28 Non-Party timely seeks a protective order, the Receiving Party shall
29 not produce any information in its possession or control that is
30 subject to the confidentiality agreement with the Non-Party before a
31 determination by the court. Absent a court order to the contrary, the
32 Non-Party shall bear the burden and expense of seeking protection
33 in this court of its Protected Material.

34 **IX. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

35 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
36 Material to any person or in any circumstance not authorized under this Stipulated Protective
37 Order, the Receiving Party must immediately:

38 (a) notify in writing the Designating Party of the unauthorized
39 disclosures,

40 (b) use its best efforts to retrieve all unauthorized copies of the
41 Protected Material,

1 (c) inform the person or persons to whom unauthorized disclosures
were made of all the terms of this Order, and

2 (d) request such person or persons to execute the “Acknowledgment
3 and Agreement to Be Bound” that is attached hereto as Exhibit A.

4 **X. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
5 **PROTECTED MATERIAL**

6 When a Producing Party gives notice to Receiving Parties that certain inadvertently
7 produced material is subject to a claim of privilege or other protection, the obligations of the
8 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
9 provision is not intended to modify whatever procedure may be established in an e-discovery
10 order that provides for production without prior privilege review. Pursuant to Federal Rule of
11 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
12 communication or information covered by the attorney-client privilege or work product
13 protection, the parties may incorporate their agreement in the stipulated protective order
14 submitted to the court.

15 **XI. MISCELLANEOUS**

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
17 modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
19 Party waives any right it otherwise would have to object to disclosing or producing any
20 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
21 no Party waives any right to object on any ground to use in evidence of any of the material
22 covered by this Protective Order.

23 12.3 Filing Protected Material. Without written permission from the Designating Party or a
24 court order secured after appropriate notice to all interested persons, a Party may not file in the
25 public record in this action any Protected Material. A Party that seeks to file under seal any
26 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
27 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
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1 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
2 request establishing that the Protected Material at issue is privileged, protectable as a trade
3 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
4 Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
5 the Receiving Party may file the information in the public record pursuant to Civil Local Rule
6 79-5(e) unless otherwise instructed by the court.

7 XII. FINAL DISPOSITION

8 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
9 Receiving Party must return all Protected Material to the Producing Party or destroy such
10 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
11 compilations, summaries, and any other format reproducing or capturing any of the Protected
12 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
13 submit a written certification to the Producing Party (and, if not the same person or entity, to the
14 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
15 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
16 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
18 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
19 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
20 product, and consultant and expert work product, even if such materials contain Protected
21 Material. Any such archival copies that contain or constitute Protected Material remain subject to
22 this Protective Order as set forth in Section 4 (DURATION).

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2 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

3 Dated : June __, 2018

LAW OFFICES OF WALKUP, MELODIA,
KELLY AND SCHOENBERG

4
5 By: _____
6 Jeffrey A. Clause, Esq.
7 Attorneys for Plaintiff
LETICIA MAGLAYA

8 Dated : June __, 2018


LIVINGSTON LAW FIRM

9
10 /s/ Renée Welze Livingston
11 By: _____
12 Renée Welze Livingston
13 Attorneys for Defendant
14 TARGET CORPORATION

15 **ORDER**

16 **PURSUANT TO STIPULATION OF THE PARTIES, IT IS SO ORDERED.**

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18 Dated : June 8, 2018

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20 Yvonne Gonzalez Rogers
21 United States District Judge
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